

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

WHAT A SMOKE, LLC,

Plaintiff,

v.

DURACELL U.S. OPERATIONS, INC.,

Defendant.

Miscellaneous Civil Action  
No. 8:20-mc-63 (LEK/CFH)

Underlying Litigation  
No. 2:19-cv-16657-JMV-JAD (D. N.J.)

**MOTION BY:**

Defendant Duracell U.S. Operations, Inc., by  
its undersigned counsel.

**DATE, TIME, AND PLACE OF  
HEARING:**

\_\_\_\_\_, 2020 at \_\_\_\_\_ a.m.  
at the US District Court, Northern District of  
New York, The Gateway Building, 14 Durkee  
St., Plattsburgh, NY 12901.

**SUPPORTING PAPERS:**

Declaration of Robert N. Phillips, executed on  
October 23, 2020, with exhibits; Proposed  
Order; and Memorandum of Law, dated  
October 23, 2020.

**RELIEF REQUESTED:**

An Order, pursuant to Fed. R. Civ. P. 37 and  
45, (i) directing Michael and Tyler Frennier to  
fully and completely respond to and comply  
with the document subpoenas within 5 days  
of the Order, and (ii) further stating that the  
Frenniers' failure to comply with the Order  
will result in an order of contempt of court  
and appropriate sanctions.

Dated: October 23, 2020

Respectfully submitted,

REED SMITH LLP

By: /s/ Talia N. Fiano

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*Attorneys for Defendant,  
Duracell U.S. Operations, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on the 23<sup>rd</sup> day of October, 2020, a true and correct copy of the foregoing notice of motion, and supporting papers referenced therein, was served upon the following counsel, via email and First Class Mail, addressed as follows:

Howard Schwartz, Esq.  
Richard Gearhart, Esq.  
GEARHART LAW LLC  
41 River Road  
Innovation Plaza, Suite 1A  
Summit, New Jersey 07901  
[howard@gearhartlaw.com](mailto:howard@gearhartlaw.com)  
[rgearhart@gearhartlaw.com](mailto:rgearhart@gearhartlaw.com)

I additionally certify that on the 23<sup>rd</sup> day of October, 2020, a true and correct copy of the foregoing notice of motion, and supporting papers referenced therein, was served upon Michael Frennier and Tyler Frennier, via email and First Class Mail, addressed as follows:

Michael Frennier  
Tyler Frennier  
14 Plattsburg Plaza  
Plattsburg, NY 12901  
[michael@mtvapes.com](mailto:michael@mtvapes.com)  
[tyler@mtvapes.com](mailto:tyler@mtvapes.com)

By: /s/ Talia N. Fiano

Talia N. Fiano, Esq. (5587530)